

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. According to the petitioner's son in law, most of the details of the petitioner's Medicaid application were handled by a social worker at the petitioner's nursing home. It appears that there was some delay in completing the application, but the petitioner does not attribute any of these delays to the Department.

3. For several months following the petitioner's admission to the nursing home, the petitioner's son in law made sure the rent continued to be paid for the apartment where the petitioner lived independently by herself up to the time of her admission to the nursing home. He states he did this based on *his* assessment that the petitioner might return to living in her apartment in the near future.

4. The Department found the petitioner eligible for Medicaid for long term care in a decision dated December 12, 2005, effective October 24, 2005 (which appears to be the date that other insurance coverage expired). The decision included a notice that the petitioner's patient share toward paying the nursing home would be \$1,085.53 a month, based on the petitioner's income and allowable deductions.

5. Following this notice, the petitioner's son in law called the Department to inquire about a deduction for the amount of the petitioner's income that he was using each month to continue to pay the rent on the petitioner's apartment. The Department advised him (correctly [see *infra*]) that he should submit a doctor's statement that the petitioner could be expected to return to her apartment within six months.

6. On or about February 3, 2006, the Department received the following statement from the petitioner's doctor, dated February 1, 2006:

I am writing at the request of the family of [petitioner] to clarify her prospects for functional recovery, especially in relation to her residence.

[Petitioner] was re-admitted to Starr Farm Nursing Center on 8/26/06 due to her inability to live independently in her apartment, the primary cause of which was osteoarthritis causing disabling pain and musculoskeletal dysfunction. Since August, [petitioner] has undergone substantial work toward rehabilitation at Starr Farm and has prodigious efforts to optimize her pain control. However, despite the best efforts of the Starr Farm nursing, physical therapy and occupational therapy staffs and myself, [petitioner's] functional abilities have not improved to allow her to return to independent living. [Petitioner] requires substantial assistance with transfers, bathing, dressing, feeding, and infrequently is able to manage a few steps of walking while using a walker. Furthermore, after five months of caring for her and watching her progress, I believe it is only remotely possible that she will return to live in her apartment in the future.

7. Based on this statement the Department denied the petitioner's request for a home upkeep deduction for her apartment.

8. At the hearing in this matter, held on June 28, 2006, the petitioner's son in law introduced portions of the petitioner's medical records that he feels indicated that there was initially some optimism by the petitioner's care providers that she could return home, therefore supporting

his decision to continue to maintain the petitioner's apartment.

9. The Department correctly points out that these records are isolated and selective, and that none of them were ever shown to the Department. Moreover, all of them predate the above-cited doctor's statement by several months. In retrospect, it cannot be concluded that they in any way contradict the opinion of the petitioner's doctor as expressed in her February 1, 2006 letter.

ORDER

The Department's decision is affirmed.

REASONS

The Medicaid regulation regarding a home upkeep deduction is reproduced in its entirety as follows:

The above regulation is clear that all requests for a home upkeep deduction require a "doctor's statement" that discharge from the institution is "expected" within six months. The above February 1, 2006 letter from the petitioner's doctor is clear that in this case such an event is highly unlikely.

There may well have been good reasons why the petitioner's son in law was optimistic about the petitioner's chances of returning to her apartment, and there is no reason not to believe that the above doctor's statement on February 1, 2006 came as a surprise to him. Unfortunately however, there is no evidence that, either now or in retrospect, would require the Department to allow a home upkeep deduction for any of the months in question. The petitioner's son in law admits that he received no incomplete or misleading information *from the Department* that led him to continue to pay the rent on the petitioner's apartment, or that caused any delay in *his* learning that it was unlikely that she would ever return to her home.

It is unfortunate that the petitioner's son in law unnecessarily continued to maintain the petitioner's apartment for so long. However, inasmuch as the Department's decision in this matter is clearly supported by the evidence,

and is fully consistent with the pertinent regulations, the Board is bound by law to affirm. 3 V.S.A. § 3091(a), Fair Hearing Rule No. 17.

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